



**PATENT**  
129250-001049/US

IN THE U.S. PATENT AND TRADEMARK OFFICE

APPLICANT: John A. Dispenza et al. Confirmation No.: 5477  
APPL. NO.: 10/029,461 Group No.: 1725  
FILED: December 21, 2001 Examiner: Kuang Y. Lin  
FOR: HEAT EXCHANGING APPARATUS AND METHOD OF  
MANUFACTURE

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**PETITION TO WITHDRAW HOLDING OF ABANDONMENT UNDER 37 CFR  
§1.181(a) et seq. OR, IN THE ALTERNATIVE TO REVIVE AN  
UNINTENTIONALLY ABANDONED APPLICATION UNDER 37 C.F.R.  
§1.137(b)**

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Randolph Building  
401 Dulany Street  
Alexandria, VA 22314  
Mail Stop PETITION

February 16, 2007

Sir:

**I. PETITION TO WITHDRAW**

Applicants hereby petition for withdrawal of the holding of abandonment in the above-identified application because the last Office Action mailed April 14, 2006 was never received by the Applicants.

The Applicants' attorney, John E. Curtin, hereby submits the following statement in support of this Petition:

02/20/2007 JADD01 00000000 503777 10029461  
01 FC:1453 1500.00 DA

**A. STATEMENT BY APPLICANTS' ATTORNEY IN SUPPORT OF  
PETITION TO WITHDRAW HOLDING OF ABANDONMENT**

- 1.) On December 6, 2005 the Applicants' attorney conducted a telephone inquiry with Examiner V. Duong (571)272-4793 to inquire into the status of the above-referenced application. Though filed in 2001, as of December, 2005 an Office Action had not yet been mailed. During this conversation Examiner Duong indicated that the application was going to be sent to a different art unit and an Office Action would issue shortly thereafter. Applicants' attorney provided Examiner Duong with his new firm name, address and telephone number so that the new art unit could contact him. At the time this application was originally filed, Applicants' attorney's address was Troutman, Sanders ("TS"), 1660 International Drive, Suite 600, McLean, Virginia 22102. At the time of the phone call with Examiner Duong Applicants' attorney's address was Harness, Dickey & Pierce ("HDP"), P.O. Box 8910, Reston, Virginia 20195.
- 2.) On March 17, 2006 Applicants' attorney joined the law firm of the Capitol Patent & Trademark Law Firm, PLLC ("CP&T"), P.O. Box 1995 Vienna, VA 22183 (703)266-3330.
- 3.) On information and belief, based on a review of the Image File Wrapper available on Electronic Private Pair an Office Action ("Office Action") in the above-identified application was mailed to Applicants' attorney at the TS address on April 14, 2006. The Office Action included a Restriction requirement and indicated a one month response date.
- 4.) TS did not forward the Office Action on to Applicants' attorney at his HDP address or CP&T address. Attempts to communicate with TS have not been fruitful. As a result, Applicants' attorney did not receive the Office Action, nor has it been found after a search of the present application's file jacket and related folders.
- 5.) Further, a search of HDP's confidential docketing records does not indicate the Office Action was received. The search involved reading HDP's confidential docketing record dated May 14, 2006, the date on which a response to the non-received Office Action would have been entered had it been received. The search was conducted by Ms. Jodie Kelly, HDP's Docketing Manager. No entry referencing the Office Action or the above-referenced application is made on the docketing record (see Declaration of Jodie Kelly enclosed).
- 6.) As of this date a Notice of Abandonment has not been received by Applicants' attorney though Electronic Private Pair indicates one was mailed on February 13, 2007.

**B. REQUEST TO WITHDRAW HOLDING OF ABANDONMENT**

Based on the above statement, the Applicant respectfully requests withdrawal of the holding of abandonment in this application.

APPLICANT HEREBY PETITIONS FOR WITHDRAWAL OF THE HOLDING OF ABANDONMENT IN THIS APPLICATION.

1. Petition Fee:

☒ No Fee is believed due.

2. Reply and/or Fee:

☒ No reply or fee is believed due.

3. Terminal Disclaimer with disclaimer fee

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

If, however, a fee is deemed necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment for any such fee, or credit any overpayment to Deposit Account No. 50-3777 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, petition fees or extension of time fees.

## **II. PETITION TO REVIVE**

In the event the Applicants' Petition to Withdraw is not granted, the Applicants hereby alternatively petition for revival of the above-referenced application. The above-identified application was unintentionally abandoned for failure to timely file a response to the Office Action dated April 14, 2006. The entire delay in filing the required reply, namely the response to the Office Action, from the due date for the reply until the filing of this petition under 37 CFR 1.137(b) was unintentional. Thus, the abandonment was unintentional.

### **APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION**

**1. Petition Fee**

☐ Small Entity - fee \$\_\_\_\_\_ (37 CFR 1.17(m))

☐ Small Entity Statement enclosed herewith.

☐ Small Entity Statement previously filed.

☒ Other than Small Entity - fee **\$1,500.00** (37 C.F.R. 1.17(m)). The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment for this fee, or credit any overpayment, to Deposit Account No. 50-3777 as well as for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, petition, Reply or extension of time fees.

**2. Reply and/or Fee**

No Reply Fee is believed due. A Reply to the Office Action dated April 14, 2006 is enclosed.

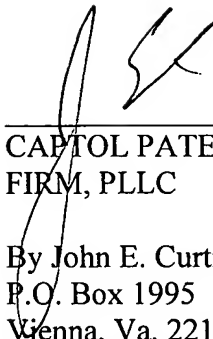
**3. Terminal Disclaimer with disclaimer fee**

☒ Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

**4. Statement.** The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional.

February 16, 2007

Date:



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CAPTOL PATENT & TRADEMARK LAW  
FIRM, PLLC

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**DECLARATION OF JODIE KELLY IN SUPPORT OF  
APPLICANT'S PETITION TO WITHDRAW HOLDING OF  
ABANDONMENT UNDER 37 CFR 1.181(a) et seq.**

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I, Jodie Kelly, hereby submit the following statement in support of the Applicant's petition for withdrawal of the holding of abandonment:

- 1.) I am the Manager of the Docketing Department of the patent & trademark law firm of Harness, Dickey & Pierce ("HDP") located in Reston, Virginia.
- 2.) I have reviewed the confidential docketing entries in HDP's docketing system for May 14, 2006. These entries do not include an entry indicating that a response to an Office Action dated April 14, 2006 was docketed.
- 3.) I further state that all statements made herein to my own knowledge are true and that all statements made herein on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both under Section 1001 of Title 18 of the United States Code and that such any willful false statements may jeopardize the validity of the application or any registration resulting therefrom.

Date: 2/15/07

Jodie Kelly  
Jodie Kelly